

BEFORE THE STATE TAX APPEAL BOARD  
OF THE STATE OF MONTANA

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EVELYN TIMMONS,	)	
	)	DOCKET NO.: PT-2002-14
Appellant,	)	
	)	
-vs-	)	FACTUAL BACKGROUND,
	)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE	)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,	)	<u>FOR JUDICIAL REVIEW</u>
	)	
Respondent.	)	

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The above-entitled appeal was heard on March 12, 2003, in the City of Libby, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Jon P. Timmons Reverend (the Taxpayer) presented testimony in support of the appeal. The Department of Revenue (the DOR), represented by Appraiser Steven G. Scott, presented testimony against the appeal.

The duty of the Board is to determine the market value of the Taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard - exceptions.**

*(1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market*

*value is a value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.*

The Taxpayer is the Appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

Based on the evidence and testimony presented, the market value is \$21,000 for the land and the value for the improvements is modified as set forth in the following opinion. The decision of the Lincoln County Tax Appeal Board shall be modified.

#### **FACTUAL BACKGROUND**

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary. The record remained open for an extended period of time to allow the

DOR additional time to provide requested exhibits. In addition, the Taxpayer was afforded an opportunity to supplement the record with written testimony in response to the DOR's exhibits.

2. The Board has jurisdiction over this matter in accordance with **§ 15-2-301 MCA**.

3. The property which is the subject of this appeal is described as:

Lots 8 & 9, Block 2, Em-Kayan First Addition and improvements located thereon. Street address of 1148 Greers Ferry, Libby Montana, Lincoln County.

4. For the current appraisal cycle the DOR appraised the subject property at \$21,000 for the land and \$216,900 for the improvements.

5. The Taxpayer filed Form AB-26, Request for Informal Review, with the DOR on June 5, 2002. The Taxpayer requested the value of the property be reduced to \$205,000. The DOR determined that no adjustment was warranted for the property on June 11, 2002. The DOR explained in letter why no adjustment was warranted. (CTAB Ex. J)

6. The Taxpayer appealed that decision to the Lincoln County Tax Appeal Board (County Board) on July 2, 2002, requesting the value of the improvements be reduced to \$184,000. The Taxpayer cited the following:

Appraised value set by the Dept. of Revenue does not reflect true market value; homes in the area are declining in value not increasing.

7. In its November 8, 2002 decision, the County Board denied the Taxpayers appeal, stating:

The County Tax Appeal Board feels that the Department of Revenue appraisal is acceptable.

8. The Taxpayer appealed the County Board's decision to this Board on November 25, 2002, stating:

Based on data presented our property valuation is about twice what it should be. Either they didn't look objectively at the data or their minds were already made up.

#### **STATEMENT OF THE ISSUE**

The issue before the Board is the market value of the subject property as of January 1, 1997, the base appraisal date for the current appraisal cycle.

#### **TAXPAYER'S CONTENTIONS**

The Taxpayer's original value request before the County Board was established from the purchase price of the property of \$205,000 on April 3, 2002. The Taxpayer modified the requested value at the onset of the hearing before this board to \$21,000 for the land and \$129,000 for the improvements, for a total market value of \$150,000. This new value request is a result of hours of preparation and research of sales and listings of property in and around Libby, which are represented in exhibits #1 and #2.

The Taxpayer stated that the DOR's appraisal indicates the presence of a hot tub with a market value of \$3,710. The previous owner removed the hot tub when the property was sold to Cendant Mobility, a relocation company. In addition, the property was originally designed for two fireplaces, but currently a gas stove is what exists. The residence also has other uncompleted items such as unfinished closets and unpainted surfaces. Mr. Timmons estimated the completion percentage for the structure at 95%. He estimates the uncompleted construction along with the nonexistent hot tub to represent \$20,000 in excess value.

Mr. Timmons asserts the DOR's determination of 107 days on the market for Cendant owned property is in error. The actual days on the market for these properties should reflect 174 days.

Mr. Timmons asserts the best comparable property to indicate a proper value would be the neighboring property, which is listed at \$210,000. This property is newer and is valued by the DOR at \$147,600. Summarized, the following table illustrates exhibits #1 and #2 along with the Taxpayer's testimony, which supports a reduced value to no more than \$150,000:

Property	Property Description	1997 DOR Value
Property located within subject subdivision		
A. 1148 Greers Ferry Road – subject	2.83 ac., 3 bed, 3 bath, 3 car gar., 3,269 SF, built in 1998.	\$237,900
B. 1118 Greers Ferry Road	.92 ac., 3 bed, 2 bath 2 car gar., 3,100 SF, built in 2000. Listed @ \$210,000	\$147,600
C. 165 Boulder	27.5 ac., 4 bed, 2 bath, 3,240 SF log home, recently sold \$180,000.	\$140,971
D. 12 Yellowtail	2.845 ac., 4 bed, 2 bath, 2 car gar., pool, 2,644 SF, listed @ \$181,900.	\$121,900
Other comparable Libby properties		
A. 130 Lower Quartz Drive	1.75 ac., 3 bed, 2 bath, 2 car gar., 3,856 SF, cedar home, built in 1990, listed @ \$165,000.	\$84,155
B. 316 Milton Drive	4.96 ac., 4 bed, 3 bath, 2 car gar., 3,423 SF, cedar home, built in 1979, listed @ \$165,000. Real Estate Broker said this was the best “comp” to ours.	\$105,687
C. 324 White Avenue	26.34 ac., 4 bed, 2 bath, 2 car gar., 2,760 SF, log home, built in 1986.	\$129,015
D. 1388 Fifth Street	4.52 ac., 4 bed, 3 bath, 2 car gar., 4,064 SF, listed @ \$255,000, built in 1990	\$149,600
E. 369 Swede Gulch Drive	5.1 ac., 4 bed, 3 bath, 2 car gar., 3,014 SF, listed @ \$220,000, built in 1999.	\$140,400
F. 11 MM Pipe Creek Road	9.686 ac., 4 bed, 2 bath, 2 car gar., 4,064 SF, log home, listed @ \$355,000, built in 1982.	\$67,716
G. 8561 FM Road	22.4 ac., 3 bed, 2 bath, 4 car gar., 3,212 SF, listed @ \$353,000, built in 1995.	\$181,973
H. 2402 Silver Butte Road	36.4 ac., 2,240 SF, built in 1971.	\$88,202
I. 42 Kootwnai Drive	.9 ac., 4 bed, 3 bath, 2 car gar., 3,200 SF, listed @ \$175,000, built in 1999.	\$75,600
J. 615 Bear Creek Road	5.87 ac., 3,080 SF, listed @ \$229,000, built in 1999.	\$138,900
K. 8677 Farm to Market	8.51 ac., 3 bed, 3 bath, 2 car gar., 3,240 SF, listed @ \$238,000, built in 2000	\$194,918
Troy area homes		
A. 75 Hidden Estates Drive	5 ac., 3 bed, 1 bath, 2 car gar., log home, built in 2001.	\$127,300
B. 2725 O’Brien Creek Road	8.94 ac., 2 bed, 2 bath, 2 car gar., 1,890 SF, contemporary home, listed @ \$265,000, built in 1999.	\$153,820
C. 2371 Bull Lake Road	1,969 SF, listed @ \$255,000, built in 1940.	\$98,460

Taxpayer's Exhibit #1 also states that the subject property was listed for \$229,000 and subsequently was purchased for \$205,000.

Mr. Timmons received an e-mail letter from Sandy Dedrick, Broker/Owner of Kootenai Homes & Land Realty (Exhibit 2), which states:

I do feel that the assessed value of your home should not be higher than what you paid for the property. I have seen several appraisals done by Verle Howell & Jay Dinning (in fact looked at one yesterday done by Dinning appraisal services) that used a bank "repo" house as a comparable, which banks are certainly "motivated" to sell these houses, even more than Cendant Mobility! We will use your home and your home has been used to set Market or Listing price for newer properties offered for sale. We consider the selling price for your house the price a buyer is willing to pay and a seller willing to sell for & I really feel that if you put the house on the market for sale we would be hard pressed to get more than what you paid for it at this point. Cendant Mobility is more "motivated" to sell than "some seller" as they feel they do not have to sell and will wait to get what they need from their home (some of these end on the market for years!). In any case you paid \$205,000.00 and that is what realtors and appraisers consider your house worth.

#### **DOR'S CONTENTIONS**

The DOR Exhibit A is the property record card (PRC) that contains information used to value the improvements based on the cost approach to value. Summarized, this Exhibit illustrates the following:

##### **Land Data**

	Acres	Land Value
	1.85	\$10,500
	.98	\$10,500
Total	2.83	<b>\$21,000</b>

##### **Improvement Data**

Year Built – 1988	2 <sup>nd</sup> Floor Area (SF) – 1,776
3 Bed/3 Bath	Physical Condition – (4) – Average
Masonry Fireplace – Stacks – 2	Condition/Desirability/Utility (CDU) – Average

Hot Tub (HT1)	Percent Good – 97 / Depreciation – 3%
Quality Grade – 6+- Good	Economic Condition Factor (ECF) – 111%
1 <sup>st</sup> Floor Area (SF) – 1,492	
Replacement Cost New (RCN)	\$212,910
Percent Good	97
ECF	111
Replacement Cost New Less Depreciation	213,190
Other Improvements (Hot Tub)	3,710
Total Cost of Improvements	216,900
Land Value	21,000
<b>Total Property Value</b>	<b>\$237,900</b>

DOR Exhibit B contains photos and characteristics of what “average quality” and “good quality” residences should possess.

Although Exhibit C is not specific to the subject property, it does illustrate how the DOR calculates the CDU (condition, desirability (location) and utility). The CDU is one component within the DOR’s Computer Assisted Mass Appraisal System (CAMAS) used to determine depreciation. The PRC indicates the DOR determined a CDU of “average” for the subject.

Exhibits G and H are photos and a footprint of the subject property respectively.

The DOR testified that Cendant Mobility is a relocation company that purchased the subject property. Cendant then sold the subject property to the taxpayer approximately three months later for less money than what Cendant purchased it for. In addition, DOR Exhibit K illustrates nine Libby area



sales in which Cendant purchased a property and then sold for less money. Summarized, this exhibit depicts the following:

**Cendant Purchases and Sales**

<u>Sale</u>	<u>Purchase Price</u>	<u>Date</u>	<u>Sale Price</u>	<u>Date</u>	<u>Ratio SP to PP</u>
#1	\$222,500	5/8/02	\$160,000	10/25/02	71.91%
#2	\$150,500	2/28/02	\$131,000	6/6/02	87.04%
#3	\$136,750	6/28/98	\$109,000	11/02/98	79.71%
#4	\$59,000	6/28/99	\$55,750	9/20/99	94.49%
#5	\$54,000	4/2/02	\$43,500	7/11/00	80.56%
#6	\$35,500	2/9/00	\$27,000	7/11/00	76.06%
#7	\$69,500	12/7/99	\$59,000	2/17/00	84.89%
#8	\$105,000	8/16/99	\$100,000	10/4/99	95.25%
#9 (subject)	\$245,000	12/25/01	\$205,000	4/3/02	83.67%

DOR Exhibit M titled "Libby Area Residential Sales Greater Than \$200,000" illustrates the following:

<u>Sale</u>	<u>Sale Date</u>	<u>Sale Amount</u>	<u>Appraised Value</u>	<u>Ratio AV to SP</u>
#1	6/30/00	\$257,950	\$214,620	120.19%
#2	9/15/99	\$205,000	\$184,758	110.96%
#3	7/31/00	\$205,000	\$159,900	128.21%
#4	12/13/99	\$278,000	\$220,050	126.33%
#5	6/15/00	\$253,000	\$199,600	126.75%
#6	9/28/01	\$215,000	\$170,400	126.17%

In addition, the DOR's presented Exhibit N, which is a list of sixty-four residential sales that sold during 2002.

The DOR doesn't dispute that the Taxpayer purchased the subject residence for \$205,000, but does contest the nature of the transaction. The DOR indicated that Cendant's clients, in this case, the Forest Service, pays a substantial fee when an employee is relocated; therefore, Cendant is willing to accept less because they recover the difference. As indicated on

Exhibit K, Cendant sold the respective properties for less than what they originally paid.

The DOR testified that the market-modeling concept within the sales comparison approach resulted in an unreliable value indication for the subject. Therefore, the DOR relied upon the "cost approach" in valuing the subject property.

#### **BOARD DISCUSSION**

The burden of appeal rests with the Taxpayer, but the DOR should provide credible evidence to support their appraisal. **(Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).**

The Taxpayer testified that he is being taxed for a hot tub that is not present. The DOR did not dispute that a previous owner removed it. Therefore, the Board will order that this component be removed from the appraisal.

The DOR appraisal reflects finished living area above the garage. Based on the photos and testimony, this portion of the residence is finished attic area. The Board will order that area above the garage be valued as finished attic.

The DOR does not dispute the fact the Taxpayer purchased the property for \$205,000, but does take the position that Cendant Mobility is highly motivated to sell the property; Cendant recovers losses from a transaction from their client, whose employee is being relocated. While this may true, it is

unsupported by any evidence. DOR's Exhibit K does illustrate the fact that Cendant Mobility is willing to sell the property at a lesser amount than was paid for property. What the Board has no supporting evidence for: is/does Cendant Mobility recoup this loss? If Cendant Mobility is compensated, the sale price should reflect amount compensated. The following table illustrates what Cendant paid for each property, sold each property for and the loss expressed in a percentage.

	<u>Cendant Purchase</u>	<u>Purchase Date</u>	<u>Cendant Sale</u>	<u>Sale Date</u>	<u>Cendent purchase to Resale (% change)</u>
1	\$222,500	5/8/2002	\$160,000	10/25/2002	-28.1%
2	\$150,500	2/28/2002	\$131,000	6/6/2002	-13.0%
<b>3</b>	<b>(subject) \$245,000</b>	<b>12/25/2001</b>	<b>\$205,000</b>	<b>4/3/2002</b>	<b>-16.3%</b>
4	\$54,000	4/2/2002	\$43,500	7/11/2000	-19.4%
5	\$35,500	2/9/2000	\$27,000	7/11/2000	-23.9%
6	\$69,500	12/7/1999	\$59,000	2/17/2000	-15.1%
7	\$105,000	8/16/1999	\$100,000	10/4/1999	-4.8%
8	\$59,000	6/28/1999	\$55,750	9/20/1999	-5.5%
9	\$136,750	6/28/1998	\$109,000	11/2/1998	-20.3%

Taxpayer's letter from Sandy Dedrick supports the DOR's assertion that Cendant Mobility is motivated. *"...that used a bank "repo" house as a comparable, which banks are certainly "motivated" to sell these houses, even more than Cendant Mobility!" "... Cendant Mobility is more "motivated" to sell than "some seller"..."* (emphasis supplied)

Real Estate Appraisal Terminology defines "Market Value" as:

The most probable price in terms of money which a property should bring in competitive and open market under all conditions requisite to a fair sale, the buyer

and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus.

Implicit in this definition is the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated.
2. both parties are well informed to well advised, and each acting in what they consider their own best interest.
3. a reasonable time is allowed for exposure in the open market.
4. payment is made in cash or its equivalent.
5. financing, if any, is on terms generally available in the community at the specified date and typical for the property type in its locale.
6. the price represents a normal consideration for the property sold unaffected by special financing amounts and/or terms, services, fees, costs, or credits incurred in the transaction.(emphasis supplied)

If Cendant Mobility were reimbursed for costs associated with the sale of a property, based on the aforementioned definition, it would be prudent to make attempts to quantify or qualify these components. The evidence and testimony presented suggests that Cendant Mobility is motivated. The only attempt to quantify the amount is illustrated in DOR's Exhibit K.

Taxpayer Exhibit #3 consists of pages six through ten of an independent fee appraisal for the subject property conducted by Jim Kampf, Hometown Appraisals, Kalispell, Montana. Summarized, this exhibit illustrates the following:

Homeowner	B. Lynn Johnson
Client	Cendant Mobility
Original List Price	\$249,000
Current List Price	\$249,000
Total Days-on-Market	20

No option, no buy/sell agreement as of date of appraisal. I have not seen the listing agreement. No prior sales of subject. New home finished in 1998.

Libby town, and some older suburb, homes have had some environmental impact in the area, due to the asbestos scare. These are typically older homes in the area, which may have had insulation used with asbestos contaminates. Newer homes in the area have had no impact.

Anticipated sale price of the subject	
property as of 11/28/01 is estimated to be	\$250,000
Date of Report (inspection)	10/31/01

Cendant Mobility ordered the appraisal and the value for the property was estimated to be \$250,000 on 11/28/01. Cendant Mobility purchased the property on 12/25/01 for \$245,000. This appraisal also indicates that it was performed in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP). All indications from the appraisal suggest the appraiser was seeking market value for the property as of 11/28/01. It is the Boards opinion that the best indication of value for the property is \$245,000 to \$250,000 at the end of 2001. Based upon reviewing the fee appraisal, it appears the Jim Kampf appraised the home as the taxpayer purchased it, i.e. no hot tub, unfinished fireplace area and finished attic. The taxpayer's request to modify the DOR's appraisal because a very small portion is incomplete is not supported.

The DOR appraises property on a cyclical basis. **§ 15-7-**

***111. Periodic revaluation of certain taxable property.***

(1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at

the rate of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class.

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) Beginning January 1, 2001, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, 2003, and each succeeding 6 years. The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county. (emphasis added)

Pursuant to statute, the DOR's appraisal for the current cycle utilizes data prior to December 31, 1996, even though the subject wasn't constructed until 1998. **ARM 42.18.106 & 42.18.109, 1997 Montana Reappraisal Plan** are rules promulgated by the DOR that addresses the reappraisal process.

The DOR valued the subject property based upon the cost approach to value. The DOR testified that the sales comparison approach, which is one method used by the DOR when valuing residential property was not used because the DOR did not have sufficient data to reflect a credible value indication. **§ 15-8-111. Assessment - market value standard - exceptions.**

- (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2)(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence or economic obsolescence.

The DOR's property record card (PRC) illustrates the following with respect to the cost approach of the residence:

Replacement Cost New (RCN)		\$212,910
Percent Good (depreciation 3%)	X	97%
<u>ECF (economic condition factor)</u>	<u>X</u>	<u>111%</u>
Replacement Cost New Less Depreciation (RCNLD)		\$213,190

In reviewing the calculations above, the RCNLD should reflect a value of \$229,240 or a 7.7% increase. The PRC suggests an increase of 1.3%. In **Skorupa v. DOR, PT-2002-15**, before this Board, the DOR testified that a local multiplier exists within CAMAS that modifies the cost approach further. In the immediate appeal, this multiplier is undoubtedly less than 100%. It should be noted that when reviewing the PRC, it would be helpful to this Board, not to mention a Taxpayer, that this adjustment be properly illustrated on the PRC. In its current form on the PRC, this gives the appearance of a hidden calculation.

The DOR's cost approach modifies the value by applying an ECF (economic condition factor). The DOR's Appraisal Manual defines the "economic condition factor" as:

a component of depreciation or market adjustment that is usually applied after normal depreciation. It is normally 1.00 (100%) for the majority of properties where the cost index has been properly established and the depreciation schedules have been adequately calibrated.

It has a role in representing the effect of the economic climate on unique

properties in a boom or bust economy. It can affect individual properties, or it can affect a whole class of properties (emphasis supplied).

The DOR testified that the 111% ECF is applied to all Libby residential properties. In addition, the DOR testified that the ECF is developed from sales and applied subsequent to depreciation, as indicated on the PRC. The Board does not dispute that the DOR's value is supported from the sales presented during the hearing and in addition the fee appraisal, but these transactions all occurred after the current appraisal cycle was completed. The DOR should have been prepared to support its value based upon information at the time data was being collected for the current cycle. It has been the practice of the Board to remove the ECF when no support has been provided (**Demarios v. DOR, PT-2000-15**). It is the opinion of this Board that the "Economic Condition Factor (ECF) of 111% be modified to 100%.

The taxpayer modified the requested value for the improvements at the onset of the hearing from \$184,000 to \$129,000. This modification in value was a result of reviewing DOR appraised values for other Libby and Troy area residential property. The Montana Supreme Court has been clear on this issue. It held in **State ex rel. Schoonover v. Stewart, 89 Mont. 257 (1931)**, "And in no proceeding is one to be heard who complains of a valuation which, however erroneous



*it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."*

It is the Board's opinion that the value sought by the taxpayer is unsupported.

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**ORDER**

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lincoln County by the local Department of Revenue office at the value that reflects the removal of the hot tub, changing the area above the garage to finished attic, and the reduction of the ECF (economic condition factor) to reflect 100%. The appeal of the Taxpayer is granted in part and denied in part.

Dated this 9th day of April, 2003.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

( S E A L )

\_\_\_\_\_  
GREGORY A. THORNQUIST, Chairman

\_\_\_\_\_  
JEREANN NELSON, Member

**DISSENTING OPINION**

Although I agree with the majority in regards to the sales data contained in the record having occurred after the DOR completed the statewide reappraisal, but the taxpayer presented no credible evidence to support a reduction in value. Therefore, the lowering of the ECF by the majority is

unwarranted. This administrative body is the finder of fact, and therefore, must consider all evidence and testimony properly put before it. In Dept. of Revenue v. Countryside Village, 205 Mont. 51, 64-65 (1983), the Court said, The statutory procedures for the determination of tax protests must be followed, and in this case they require that STAB proceed to take evidence with respect to the individual protestors to determine if their individual properties have been overvalued in accordance with the criteria which we adopted from Maxwell v. Shivers (1965), 257 Iowa 575, 133 N.W.2d 709, 711; Department of Revenue v. State Tax Appeal Board, 613 P.2d at 695. Based on that evidence, in protests over which STAB now has jurisdiction, it may affirm, modify or reverse the decision of the County Tax Appeal Boards. (emphasis added). There is nothing in the record to indicate that the Taxpayer's property has been overvalued.

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MICHAEL J. MULRONEY, Member

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### CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**
2. **§15-8-111 MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts. (b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.
3. **§15-2-301 MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain

burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

5. **§ 15-7-111. Periodic revaluation of certain taxable property.** (1) The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually.
6. **State ex rel. Schoonover v. Stewart**, 89 Mont. 257 (1931), "And in no proceeding is one to be heard who complains of a valuation which, however erroneous it may be, charges him with only a just proportion of the tax. If his own assessment is not out of proportion, as compared with valuations generally on the same roll, it is immaterial that some one neighbor is assessed too little; and another too much."
7. **Dept. of Revenue v. Countryside Village**, 205 Mont. 51, 64-65 (1983).
8. **Maxwell v. Shivers** (1965), 257 Iowa 575, 133 N.W.2d 709, 711; **Department of Revenue v. State Tax Appeal Board**, 613 P.2d at 695. Based on that evidence, in protests over which STAB now has jurisdiction, it may affirm, modify or reverse the decision of the County Tax Appeal Boards.
9. The Board finds that the evidence presented supports its

conclusion that the decision of the Lincoln County Tax Appeal Board be modified.

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 9th day of April, 2003, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Evelyn K Timmons  
1148 Greers Ferry  
Libby, Montana 59923

Lincoln County Appraisal Office  
C/O Steven Scott  
Lincoln County  
County Courthouse  
Libby, Montana 59923-1942

Office of Legal Affairs  
Department of Revenue  
Mitchell Building  
Helena, Montana 59620

Jim Morey  
Lincoln County Tax Appeal Board  
152 Rawlings Road  
Libby, Montana 59923

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DONNA EUBANK  
Paralegal